

REMARKS

Applicants respectfully request reconsideration and allowance in view of the following remarks.

Rejection of Claims 39-54 Under 35 U.S.C. §103(a)

The Office Action rejects claims 39-54 under 35 U.S.C. §103(a) as being unpatentable over Beach et al. (U.S. Patent No. 6,728,713) ("Beach et al.") in view of Andros et al. (U.S. Patent No. 5,045,850) ("Andros et al.") and further in view of Hoffberg (U.S. Patent No. 6,850,252) ("Hoffberg"). Applicants first traverse this rejection and respectfully submit that the combination of Beach et al., Andros et al., and Hoffberg does not teach or adequately suggest all the limitations of claim 39. Applicants second reiterate the previous arguments regarding analogous art, a portion of which is reproduced below, inasmuch as Andros et al. is a pager-related reference and is not analogous to the present invention or to the other references.

Specifically, claim 39 recites "selecting a process for obtaining the needed performance content from at least one of a plurality of performance transmitters based on global positioning system (GPS) information." The Final Office Action dated 20 August 2009 asserts that Hoffberg teaches this limitation at col. 128, line 67 – col. 129, line 7, which says "In a mobile receiver, it is preferable to include as a factor in the selection of commercial information a location of the receiver, as might be obtained from a GPS system, cellular location system, intelligent highway system or the like. This would allow geographically appropriate selection of commercial information, and possibly overlay information as well, e.g., traffic reports." Hoffberg teaches selecting commercial information based on location, not a process for obtaining that information. Earlier in that same paragraph, Hoffberg teaches a single source for transmitting the selected commercial information, i.e. a radio transmitter which broadcasts content, an overlay track, and

variable commercial information. Hoffberg, col. 128, lines 52-54. In other words, Hoffberg teaches a mobile device that receives selected information using a single process and from a single source. Hoffberg can not teach or suggest selecting a process for obtaining performance content based on GPS information, as recited in claim 39, because the process is the same, even if the received information changes.

As stated in the previous response filed 24 May 2009, the examiner must determine what is “analogous prior art” for the purpose of analyzing the obviousness of the subject matter at issue. “Under the correct analysis, any need or problem known in the field of endeavor at the time of the invention and addressed by the patent [or application at issue] can provide a reason for combining the elements in the manner claimed.” *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385, 1397 (2007). Thus a reference in a field different from that of applicant's endeavor may be reasonably pertinent if it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his or her invention as a whole. MPEP 2141.01(a). In this case, the Abstract teaches that the need or problem known in the field is media distribution, such as a radio or television station transmitting songs or movies. Andros et al. is directed to transmitting messages to pagers. Andros et al. would not have logically commended itself to an inventor's attention because it involves pagers which are incapable of displaying media in any meaningful form. Certainly the pagers at the time of the disclosure of Andros et al. (1989) did not possess the requisite output capability, data storage capability, battery life, processing power, and bandwidth to display media such as songs and movies. One of skill in the art would have considered the subject matter of the disclosure of Andros et al. as well as its old age and likely discard it as being specific to devices of insufficient ability, i.e. pagers. Pagers are, by and large, relegated to very utilitarian roles such as emergency services. More multimedia-centric applications, such as the

one recited in the claims, have evolved to exist on a plethora of other devices, such set-top boxes, smartphones, PDAs, laptops, netbooks, and others. With such a wide variety of multimedia references, an inventor would not likely closely consider the teachings of Andros et al. because it relates to limited-capacity, non-multimedia-capable devices. For these reasons, Applicants submit that the relied upon references are non-analogous and should not be combined in the manner proposed in the Office Action.

Inasmuch as Hoffberg fails to teach or adequately suggest the asserted limitations and inasmuch as the cited references are not analogous to the claims or to each other as set forth above, Applicants submit that claim 39 is patentable over Beach et al., Andros et al., and Hoffberg et al. Applicants further submit that claims 40-45 are patentable over the cited art inasmuch as they depend from claim 39 and recite additional limitations therefrom. Applicants further submit that claim 46 and its dependent claims are patentable inasmuch as they recite similar limitations. Accordingly, Applicants respectfully submit that the claims are in condition for allowance and request that this rejection be withdrawn.

CONCLUSION

Having addressed all rejections and objections, Applicants respectfully submit that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited. If necessary, the Commissioner for Patents is authorized to charge or credit the **Novak, Druce & Quigg, LLP, Account No. 14-1437** for any deficiency or overpayment.

Respectfully submitted,

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